

**Testimony of W. Ron Allen, President  
National Congress of American Indians  
Before the United States Senate Committee on Indian Affairs  
Regarding the Implementation of Welfare Revisions in Indian  
Country**

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Good morning Chairman Campbell, Vice Chairman Inouye and distinguished members of the Indian Affairs Committee. I am W. Ron Allen, President of the National Congress of American Indians (NCAI), the oldest and largest Indian advocacy organization in the United States devoted to promoting and protecting the rights of Tribal governments and their citizens. I also serve as Chairman of the Jamestown S’Klallam Tribe. I very much appreciate the opportunity to comment on the impacts of the implementation of welfare revisions in Indian Country. Further, NCAI’s testimony contains several proposed changes to the welfare reform law that we ask this Committee to support so that tribes might fully participate in welfare reform and that our citizens have every opportunity to become productive and engaged community members.

**I. Overview**

In the Summer of 1996, the 104<sup>th</sup> Congress passed, and the President signed into law, the *Personal Responsibility and Work Opportunity Reconciliation Act of 1996* (Pub. L. 104-193), more commonly referred to as *Welfare Reform*. The following year, the 105<sup>th</sup> Congress technically amended portions of the welfare reform law and established a Welfare-to-Work (WtW) program, as part of the spending provisions of the historic *Balanced Budget Act of 1997* (Pub. L. 105-33). The result of these laws is an unprecedented and comprehensive change in the way federal welfare assistance is provided to individuals, children and families living in poverty throughout the United States.

These new laws exact broad-sweeping changes in federal entitlements such as: Aid to Families with Dependent Children (AFDC), now a discretionary block grant to states known as Temporary Assistance for Needy Families (TANF) which mandates work participation requirements; Food Stamp eligibility; Medicaid and Medicare program delivery; child care and other children's support programs; and a host of other welfare related assistance programs and services. Devolution of most of these programs to states and often, in turn, to local governments has alleviated the federal government of most of its fiscal and jurisdictional program responsibilities. Federal funding for most of these programs is now discretionary in nature as well, with spending authority block-granted directly to the states.

## **II. WELFARE REFORM AND INDIAN COUNTRY**

The impacts of welfare reform on this nations' poor are monumental. However, in Indian Country, where tribal communities historically suffer the highest levels of poverty and unemployment in the nation, those impacts are proving to be devastating. Few provisions in the law protect, or even address, the unique status and needs of Indian Country. The treatment afforded to tribal governments under the new law, as compared to that of the states, is extremely disproportionate. And yet, to date, Congress, as well as the Administration, have been compelled to do little, if anything, to help tribes achieve the appropriate economic and community development standards necessary to counter the impacts of these laws and policies on tribal communities.

Many within the Congress and the Administration are quick to assert opportunities afforded to tribal governments under the welfare reform law, such as, the ability to operate their own tribal TANF plan independent of state and local government intervention. However, the unfortunate reality is that the resources necessary to develop the physical, administrative and programmatic infrastructures needed for successful TANF implementation are not available to most tribal governments. For example, under AFDC, states were required to provide matching funds toward their

programs equal to a percentage of the federal assistance dollars they received. This requirement, coupled with more than sixty years of federal subsidies and technical assistance provided to states in developing AFDC program systems, created an excellent foundation for the success of state TANF plans. However, in absence of such federal support for tribal program development similar to what the states have been provided, tribes are at an extreme disadvantage in implementing their own TANF programs.

Under the law, tribes can administer their own welfare assistance programs through the implementation of a U.S. Department of Health and Human Services (DHHS) approved tribal TANF plan. However, states are not required to provide the much-needed state matching funds to those approved tribal TANF plans. This lack of basic support makes it virtually impossible for most tribes to assume welfare assistance program responsibilities without state matching funds. Moreover, the welfare reform law only guarantees tribes the federal dollars expended on those identifiable tribal populations served under the Fiscal Year (FY) 1994 AFDC program. The reality of operating a tribal TANF plan is this: tribes are offered an opportunity to assume highly expensive welfare program responsibilities; to serve a welfare population that is usually larger than the population identified under the state's FY1994 AFDC recipient data; with roughly half of the funding that the states needed to operate those same programs; including little or no technical support from either the states or the federal government. Unless a tribe already has the economic resources necessary to devote to such a program, it makes little fiscal sense for that tribe to assume such costly responsibilities under current statutory and regulatory impediments.

Welfare reform subjects TANF recipients to strict work participation requirements in an effort to force habitual welfare recipients into the workforce. However, compliance with these requirements have caused problems for many tribes. Under federal guidelines, an individual's TANF payments will be provided for a period of not

more than two consecutive years, with cumulative lifetime payments capped at a five-year maximum. States can impose even stricter requirements if they choose. There is a tribal provision in the law (PRWORA, § 408) which allows an Indian adult to deduct from their five-year cumulative limit any time living on an Indian reservation as an unemployed person, so long as that reservation community has a reporting period unemployment rate of at least 50 percent. For tribes that can document a 50 percent unemployment rate throughout the entire reporting period, this is a well-suited provision. Most tribes, however, cannot meet this requirement, showing instead a fluctuating unemployment rate hovering just below 50 percent, due mainly to seasonal or temporary employment on their reservations.

To a single Indian mother with children living on a reservation with a 38 percent or 45 percent unemployment rate, instead of a 50 percent unemployment rate, the difference in the quality of life for her family at any of those slightly varying unemployment levels is negligible. The bottom line is that single mothers with children in their care continue to make up the majority of the unemployed populations on Indian reservations. Without adequate jobs, education, vocational training and family support services, it is impossible for impoverished single mothers to seek and secure employment opportunities, on or off the reservation, without literally abandoning their children.

Welfare reform's current implementation in Indian Country fails to address the underlying cause of unemployment on Indian reservations -- **a lack of jobs**. Creating better tribal economic development opportunities, which in turn lead to sustainable economies and the creation of jobs for unemployed Indian parents is the real issue that Congress and the Administration must address more vigorously. Indian parents want the same opportunities as non-Indian parents, including secure employment, freedom from poverty and an improved quality of life for their families. Mr. Chairman, NCAI applauds your commitment to improving the economic conditions in tribal communities

as a primary solution to eliminating poverty throughout Indian Country. Moreover, NCAI urges this Committee to support the tribal recommendations discussed below which amend the welfare reform law as an initial step in ensuring that economic opportunities in Indian Country serve to improve the lives of our most impoverished Indian families.

### **III. INDIAN COUNTRY'S RESPONSE TO WELFARE REFORM**

Tribal leaders have responded to the enactment of welfare reform with great concern. Throughout several NCAI national gatherings on welfare reform, tribes have accurately depicted the enormous impacts welfare reform is having on their communities, provided substantial anecdotal information on these impacts as well as noted changes in the law that must occur in order to reverse such impacts. Tribal leaders have mandated NCAI to make a top priority of monitoring national legislative and policy developments surrounding welfare reform, as well as be prepared to implant tribal concepts and positions on welfare issues whenever such opportunities arise.

NCAI realizes that the collecting and sharing of information is vital to a better understanding of the true social service needs in Indian Country. NCAI also discovered early on a significant lack of statistical information, both demographic and recipient-related, that identifies the specific social service needs of Native American families. Therefore, in NCAI's effort to address these and other welfare reform issues, we hosted several national tribal welfare reform meetings and forums throughout the United States, including: Phoenix, AZ; Seattle, WA; Washington, D.C.; Portland, OR; Green Bay, WI; and, Myrtle Beach, SC. At each of these events, federal and state agency officials joined with tribal leaders and tribal representatives in formidable discourses over welfare reform's impacts on Indian Country. Throughout these forums many options were identified that the tribes, the states and the federal government should take under consideration to help ensure that tribes are fully included in welfare

reform implementation processes. Transcripts and documents associated with these forums have been recorded, developed and made available to the general public as part of NCAI's role as a national information clearinghouse on tribal welfare reform issues. These documents may be reviewed and downloaded from the NCAI web site at: <http://www.ncai.org>.

Using this information, NCAI facilitated the development of a series of proposed Indian amendments to the Welfare Reform Act, which were completed and submitted to Congress in February 1997. While some of the proposed changes were included in the Balanced Budget Act of 1997, several have yet to be acted upon. It is our contention that these proposals, if enacted, would help facilitate a positive opportunity for tribes to more fully and more meaningfully participate in welfare reform. The following is a brief explanation of each provision included in the initial amendments package, along with highlights of any action taken, either congressionally or administratively. A full text version of the amendments package has been provided as an attachment to this document.

- 1) Supplemental Funds for Tribal TANF Programs - provides tribes operating TANF plans funding levels equal to those the tribal welfare population received under AFDC.
- 2) Availability of TANF Loans to Indian Tribes - clarifies current law making Indian tribes with tribal TANF programs eligible for federal welfare program loans. ***This amendment was included in the Balanced Budget Act of 1997 (Pub. L. 105-33).***
- 3) Tribal Development Fund - establishes a "Tribal Development Fund" providing equal access for tribes to contingency funds, program

bonus awards and technical assistance funding, currently available only to states.

- 4) Disregard of the 60 Month Time Limit on Tribal TANF Benefits - allows time spent by an Indian family, living on a reservation, to be disregarded from the 60-month time limit on TANF benefit eligibility; redefines “Indian Reservation” to include Indian communities in states such as Alaska and Oklahoma; eliminates the “one thousand (1000) person” population requirement of a reservation in order for families enrolled in smaller tribes to qualify for the time limit disregard; and calls for the use of the “best available data” in determining population and unemployment levels a reservation must experience to qualify as a time limit disregard community. ***This amendment was included in the Balanced Budget Act of 1997 (Pub. L. 105-33).***
- 5) Tribal Determination of BIA/GA Program Payment Levels - provides tribes with more control and flexibility over the spending levels and spending authority of the BIA’s General Assistance (BIA/GA) program to help relieve the impacts of welfare reform on their communities. ***The BIA is currently revising their tribal General Assistance regulations, however, tribes have yet to be assured that such revisions will reflect this change.***
- 6) Cooperative Agreements with States over Child Support Enforcement Functions - allows tribes an option to enter into cooperative agreements with the states to use state procedures and guidelines to supplement a tribal court system in operating tribal child support



enforcement programs. ***This amendment was included in the Balanced Budget Act of 1997 (Pub. L. 105-33).***

- 7) Direct Funding for Tribal Child Support Enforcement Programs - allows tribes operating Child Support Enforcement (CSE) programs to receive direct funding from the Department of Health and Human Services (DHHS). ***Although this amendment was combined with tribal amendment six and included in the Balanced Budget Act of 1997 (Pub. L. 105-33), the Administration has yet to promulgate regulations and refuses to release such funding until those regulations are in place.***
- 8) Assurance of Equal Consultation with Tribes over State Plans - assures that tribes receive equal consultation surrounding the design of welfare services under state plans.
- 9) State Option to Exclude Tribal Work Program Participants - allows states to exclude individuals served by a tribal work program from being calculated in a state's work participation rates. ***This amendment was included in the Balanced Budget Act of 1997 (Pub. L. 105-33).***
- 10) Reporting Requirements for Tribal TANF Programs - allows the data collection and reporting requirements associated with operating a TANF program to be modified on a case-by-case basis to adapt to a tribe's capabilities.
- 11) Tribal Inclusion in Secretary's National TANF Program Studies - mandates the Secretary to conduct research on tribal TANF

programs as well as state TANF programs, including information on potential benefits, effects, and costs of operating different TANF programs.

- 12) Tribal Retro Cession - allows a tribe to retro cede a tribal TANF grant back to the Secretary, and discontinue operating a tribal TANF program, if preconditions identified in the tribal TANF plan (i.e., infrastructure improvement, technical assistance, job opportunities) do not exist. ***Language on retro cession of a tribal TANF plan back to state authority and control has been included in the Notice of Proposed Rule Making (NPRM) on tribal TANF/Native Employment Works (NEW) programs set for final promulgation on November 22, 1998.***

- 13) Equitable Assistance to Indians under State TANF Plans - enforce state requirement to provide equitable services to Indian individuals not receiving assistance from a Tribal TANF Program. ***A few states have complied with the law and provided equitable access to Indian individuals under their state plans. However, this requirement (PRWORA, § 402(A)(5)) carries no enforcement provision under the current law, allowing states to disregard providing equitable assistance to Indian families under state plans.***

- 14) Tribal Appeals - allows Tribal governments operating TANF programs, access to an appeals process over adverse actions by the Secretary similar to the process available to the states.

As noted, a few of these amendments were included as part of the enacted changes to the welfare reform law during the last Congress. However, most of the proposed tribal amendments were not considered, including those that would have effectuated the most significant welfare reform changes in Indian Country. In addition, since the development of the February 1997 amendments' package, tribes have identified further impediments under the law that require legislative attention. The following is a brief description of these additional issues.

- I) ***Ability of Tribes to Retain "Carryover" TANF Funds.*** This is a major issue for all the TANF tribes and tribes considering TANF. It is unlikely that the DHHS will reverse its position taken in the Proposed Rules (based on its legislative interpretation that Congress did not intend to allow tribes to carry over funds even though states are permitted to do so), absent a legislative fix. Such a fix would not require new funding and could be argued as a matter of oversight in drafting the law.
  
- II) ***Reauthorization of the Tribal Funding in the Welfare-to-Work Program, Including an Increase in the Amount of Tribal Set-Aside Funding and a Relaxation of the Rules.*** The Welfare-to-Work (WtW) program was authorized for only two years -- FY1998-99. The tribal set-aside is only 1 percent of the total WtW funding. The complexity of the rules and the targeting provisions have made it difficult for tribes to take full advantage of this money, which is the only new source of funding to enable tribes to provide employment services to TANF recipients. The Administration is asking Congress for a one year extension of the Welfare-to-Work program in its FY2000 budget request, with a funding level of \$1 billion. Reportedly, the Administration is considering an increase in the tribal set-aside under WtW from 1 percent to 3 percent, thereby increasing the

tribal share to \$30 million for the upcoming fiscal year. Congress is urged to support this initiative.

III) ***Distribution of Child Support Collections to Tribal TANF Programs.***

This is a major issue for many, if not all, of the 19 TANF grantees. With or without some form of state match, such collections are a potentially important source of support for tribal TANF programs. The issue does not involve any new funding, but may require clear statutory authority to insure that tribes receive such collections from absent parents of tribal TANF clients.

IV) ***Treatment of the Tribal TANF Program as a Pub. L. 93-638 Program for Tribal Contracting Purposes, Including Payment of Contract Support***

***Costs.*** This issue is currently before the Federal District Court in Phoenix as a result of litigation initiated by the Navajo Nation over the DHHS Secretary's initial decision to refuse tribal 638 contracting of TANF. It should be noted that any legislative action on this issue brings with it the potential of raising broader questions about the scope of 638 contracting. Therefore, we ask that such amendments be narrowly construed to help eliminate the risk of additional changes being offered that may carry unknown consequences.

V) ***BIA's Revision of 25 C.F.R. Part 20, Financial Assistance and Social Service Programs.***

The revision of the BIA social service regulations has not been the BIA's most timely or inclusive effort. In fact, as recently as June 1998, the Bureau stated for the record that they would plan to hold a series of consultation sessions with tribes throughout Indian Country. Tribes asked for more, including the establishment of a tribal working group to help facilitate a true negotiated rule making process

(neg./reg.) over the revision of these regulations. To date, no appropriate consultation with tribes has occurred over the proposed revisions to Part 20. The BIA did announce, but then postponed, a planned consultation with tribes. To date, no official rescheduling of that consultation session has occurred, and, although promised much more, tribes will probably have to resort to filing written comments on these revisions during a 30 or 60 day public comment period, as part of a standard regulatory promulgation process. To make matters worse, it is reported that the latest draft of the BIA's proposed social service regulations appear to diminish General Assistance (GA) as a safety-net program of last resort. A proposed provision states that if an individual is sanctioned from a state or tribal TANF plan due to a noncompliance, even noncompliance with state work participation requirements due to a lack of available jobs, he or she may be ineligible for GA.

Mr. Chairman, we urge Congress to consider action on these proposed changes to the welfare reform law. It is in the best interest of all parties -- tribal, state and federal -- that tribes succeed in the welfare reform process. If the proposed changes to the law are enacted, we feel that welfare reform will move closer to becoming the tool Congress intended in alleviating welfare dependency by improving and expanding workforce development initiatives.

#### **IV. THE LACK OF TRIBAL CONSULTATION**

Most social service experts familiar with Indian Country concur that once Indian families reach their TANF eligibility time limits, or exhaust their TANF benefits completely, they will have no choice but to turn to the tribe for support services, including General Assistance (GA), to meet many of their basic needs. Considering the federal government's continued under-funding of the GA program, which in most cases is the only form of cash assistance available directly from the tribe to its members,

concerns over the future of poor and needy families in Indian Country take on a whole new urgency. In efforts to address these concerns, the Bureau of Indian Affairs (BIA), in conjunction with the NCAI 1998 Mid-Year Session in Green Bay, WI, held a tribal introductory session on the proposed draft revisions to 25 C.F.R. Part 20 - Financial Assistance and Social Service Programs, which includes the GA regulations. As noted above, the BIA promised tribes at this session that they would plan a series of consultation sessions with tribal governments in the coming months throughout Indian Country.

Per NCAI Resolution EC-99-001 (attached), tribes have concluded that anything short of full consultation with Indian Nations over proposed changes to 25 C.F.R. Part 20, is unacceptable. As a matter of principle, such lack of full and deliberate consultation with tribes violates long accepted government-to-government relations established between the federal trustee and Indian tribes via treaties, statutes and executive orders. Executive Order #13084 further supports this policy by calling on all federal-level departments and their agencies to develop an improved consultation and negotiations process with Indian tribes over the promulgation of federal regulations that effect them.

Indian Country's effort to extend the government-to-government relationship beyond the confines of the BIA and the Indian Health Service (IHS) comes at a critical time when Indian programs and service functions are rapidly expanding within other federal agencies. These newly targeted agencies will undoubtedly look to the BIA as a model to develop their own tribal consultation and negotiation policy. Recognizing this potential role model status makes the BIA's lack of tribal government consultation over the GA revisions extremely troubling.

NCAI has also developed a set of comments on the tribal Temporary Assistance for Needy Families / Native Employment Works (TANF/NEW) Notice of Proposed Rule

Making (NPRM). After incorporating comments from tribes, intertribal and national/regional Indian organizations, a task force comprised of tribal welfare reform and social service experts helped identify issues and draft a comprehensive set of comments which NCAI then finalized and submitted to the DHHS. However, the consultation and negotiation process with tribes by the DHHS on promulgating federal regulations to implement the tribal TANF/NEW laws have been minimal, consisting primarily of:

- a) a five-page, Tribal TANF Questionnaire sent to all federally recognized Indian tribes on February 11, 1997, which provided tribes an opportunity to propose suggestions to the ACF on a number of issues, including: i) what types of tribal data sources should be used to determine funding levels for tribal TANF grants; ii) the contents of, and process for, approving tribal TANF plans; iii) the penalty assessment process for tribal TANF plan violations; iv) tribal work participation requirements and time limits; v) tribal data reporting requirements; and vi) the level of consultation and negotiation required by the tribes of the ACF;
- b) a guidance document for tribes to use in developing their own TANF plans, also sent to tribes on February 18, 1997;
- c) a Data Processing Capacities Questionnaire sent to tribes on March 11, 1997, that was disseminated in an effort to identify the current level of electronic communications and data processing capacities of tribes; and,
- d) a tribal TANF/NEW NPRM published in the Federal Register on July 22, 1998, with an original comment deadline of sixty days which was extended an additional sixty days by the DHHS at the urging of tribes and the NCAI.

Mr. Chairman, the serious lack of tribal consultation by the federal government over such enormous social service changes in Indian Country has directly contributed to the significant lack of participation by tribes in welfare reform programs. The lack of tribal participation in these program functions should raise concerns in Congress as to why such a de minimis level of tribal participation exists. To date, less than twenty tribal TANF plans have been approved and implemented. Of these, the majority serve only a single tribe, with two serving a consortia of tribes. All total, less than one-eighth of the 559 federally recognized tribes are seeking to implement welfare reform on their own.

## **V. STRENGTHENING GOVERNMENTAL RELATIONS**

Improvements in the actual implementation of state and local government welfare reform plans in tribal communities must come from negotiations between state, local and tribal governments over state and local government delivery of welfare reform programs and services in tribal communities. Most tribes are reluctant to enter into negotiations with state and local governments over functions that they deem a part of the federal-tribal trust responsibility. Unfortunately, this current era of devolution does not protect or even recognize such federal responsibilities. Until changes in law and policy reaffirm the responsibility of the federal government over sovereign Indian Nations, it is in the best interest of tribes to negotiate agreements with the states over the implementation of welfare reform in American Indian and Alaska Native communities.

To advance tribal programs with treatment, resources and respect equivalent to state-administered programs, it is our goal to provide Congress with tangible evidence as to the needs of tribes. To help meet these challenges, NCAI has secured grant funding from the W.K. Kellogg Foundation to address, among other things, the strengthening of governmental relations between states and tribes. Importantly, NCAI's efforts under the Kellogg grant will lead to further identification and improved



awareness of issues, create an objective information base that is relevant and useable by a variety of policy stakeholders, and explore ways to engage states, tribes, and the organizations that serve them both in more formidable public policy decision-making processes.

Along with NCAI, other Indian organizations and academic institutions have committed to help strengthen government relations between tribes, states and the federal government, either through the development of data collection and tracking methodologies, or through grassroots networking on common socio-economic issues that affect both tribal and non-tribal populations. The following is a brief highlight of these initiatives.

- The National Indian Council on Aging, who is pioneering the use of Geographic Information System (GIS) mapping technology as a way of better defining elder population demographics, including statistical data on socio-economic and health-related needs. Such technology has enabled a revolution in data management and analysis, allowing disparate data to be interwoven into a graphic map that illustrates how areas (state, county, zip code, block group, et cetera) differ on the basis of selected indices.
- The Kathryn M. Buder Center for American Indian Studies at Washington University in St. Louis, MO, headed by former Assistant Secretary for Indian Affairs, Dr. Eddie Brown, is involved in a five-year study designed to monitor the impacts of welfare reform on low-income families with children living on Indian reservations in Arizona. Findings from this study, based on both primary and secondary data sources, will be extremely helpful in informing the national public policy debate on improving economic opportunities for American Indian parents and providing an

adequate standard of living for their children and families facing the most severe impacts of welfare reform in their reservation communities.

➤➤➤ The Rural Institute on Disabilities at the University of Montana is conducting a study on the impacts of welfare reform on disabled populations. This effort focuses on a broad range of welfare reform-related disability concerns including those of American Indians and Alaska Natives, veterans with disabilities, elderly with disabilities, and parents of children with disabilities. Identifying and collecting data on the special needs of disabled persons currently on welfare assistance, especially those surrounding the lack of employment opportunities and social support services for the disabled, will be the primary focus of this study. Once complete, these findings will help to better inform tribes, states and the federal government on the unique needs associated with disabled welfare-dependant populations, along with options to improve employment opportunities and accompanying support services for disabled workers.

Mr. Chairman, efforts such as the ones highlighted above are critical to a better understanding of welfare reform's broad-reaching impacts on Indian Country. Through these efforts, we are beginning to identify common concerns that affect both Indian and non-Indian populations alike. These are the issues that lay the foundation for more productive relations between tribal, state and federal government entities. We urge Congress to support efforts such as these by increasing federal funding sources and improving tribal eligibility requirements for such funding. In this way, Indian Country can expand its efforts of enhancing intergovernmental relations with federal, state and local government entities.

## **VI. IN CONCLUSION**

In large part, tribes perceive welfare reform as a devolution of federal trust responsibilities to states and local governments without appropriate inclusion and empowerment of tribal governments. Much of their concern is caused by the ambiguity toward the treatment of tribes under the welfare reform laws themselves. The federal government no longer controls most of the allocation of cash assistance, including eligibility requirements and actual cash disbursements, to Indians. Moreover, many tribes have trust provisions in their treaties which call for health, education, welfare and social service support to be rendered by the federal government. For these tribes, as well as for all of Indian Country, welfare reform constitutes an encroachment upon the government-to-government relationship which exists between tribal governments and the federal government. Considering the issues surrounding welfare reform and the substantial impacts these laws and policies are having on tribal communities, NCAI has intensified its level of advocacy on behalf of Indian Country.

Devolution is a growing trend in the United States, with more localized government control over historically federal functions gaining broad-based support among the voting public. Tribal governments also advocate for more control over federal programs, services and funding. Welfare reform is the first major test case of this devolutionary trend. Of utmost concern to tribes, however, is the protection, improvement and expansion of the government-to-government relations between tribes, states and the federal government under devolution. Federal and state governments on the other hand, persist in their lack of acknowledgment of and respect for the sovereignty of tribal governments. Tribal, state and federal commitments to enhance and strengthen government-to-government relationships must be obtained and upheld if improving the quality of life for impoverished Indian families is to occur.

Mr. Chairman, as we have highlighted today, NCAI's proposed changes to the Welfare Reform Act will help to alleviate some of the concerns identified by tribes under welfare reform. It is the goal of NCAI to see a comprehensive set of tribal

amendments to welfare reform introduced in Congress, whether under a single instrument, or categorically separated into more “issue focused” packages. If the foreseen congressional agenda requires the separation of issues as a more appropriate tactic for advancing our tribal welfare reform concerns, NCAI would support such initiatives. In this way, tribally specific positions on a variety of welfare related categories (i.e., TANF, job creation, job training/adult-vocational education, Medicaid, data collection, child care, transportation and housing, et cetera) will be available for possible inclusion in a number of potential legislative initiatives before the 106<sup>th</sup> Congress. It is the collective wisdom of tribal leaders and the NCAI that under the current political climate, this approach may prove more successful than trying to get a comprehensive set of amendments adopted as part of a single bill.

NCAI appreciates the Committee’s interest in the impacts that many tribes are currently faced with under welfare reform. We urge this Committee to continue working with NCAI, and others, in the introduction of an amendments package this session. Even if only technical in nature, such legislation will go along way in overcoming some of the impediments identified by tribes under the current law in implementing adequate social service delivery programs in their communities.

As the process of implementing and possibly amending welfare reform continues through the Administration and the Congress, NCAI will continue to serve as a lead advocate on eliminating the Welfare Reform Act’s disparities toward Indian Country. Mr. Chairman, NCAI looks forward to working with the Senate Indian Affairs Committee to develop such amendments to the welfare reform statutes as a way to ensure the protection and support of tribal sovereign rights aligned with the provision of social service deliveries, including welfare assistance, to its members. Through the directive of tribal leaders, NCAI stands ready to work with all interested parties to ensure that these goals are achieved.

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## ATTACHMENTS



### **Indian Amendments Package to Pub. L. 104-193**

"Personal Responsibility and Work Opportunity Reconciliation Act of 1996"

This 18 page amendments package is provided as an initial response by tribal leaders to amend the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Some of these amendments were made part of the DHHS Secretary's technical amendments package that was enacted as part of the Balanced Budget Act of 1997. Questions or clarification of any of the following materials should be addressed to NCAI at (202) 466-7767.

**AMENDMENT #1 - Supplemental Funds for Tribal TANF Programs - *Providing to tribes the total funding used by the states to provide services to Indian families who will now be served by a tribal program, not just the federal share***  
**Proposed Amendment: Below are two options for federal contribution of what would be the state share for tribal TANF programs.**

*(Two) OPTIONS TO PROVIDE SUPPLEMENTAL FUNDS TO TRIBAL TANF PROGRAMS TO REPLACE THE LOSS OF STATE FUNDS*

Option 1 - Secretary to pay tribes with approved TANF plans both the federal share, and what would have been the state share, of TANF funds (an entitlement).

Title I of P.L. 104-193, Section 412 (a) (1) (B) is amended to read:

"(a) GRANTS FOR INDIAN TRIBES.-

(1) TRIBAL ASSISTANCE GRANT.-

(A) IN GENERAL.- For each of fiscal years 1997, 1998, 1999, 2000, 2001, and 2002, the Secretary shall pay to each Indian tribe that has an approved tribal family assistance plan a tribal family assistance grant for the fiscal year in an amount equal to the amount determined under subparagraph (B), and shall reduce the grant payable to any state in which lies the service area or areas of the Indian tribe by that portion of the amount so determined that is attributable to **federal** expenditures by the state.

(B) AMOUNT DETERMINED.-

(I) IN GENERAL.- The amount determined under this subparagraph is an amount equal to the total amount of the Federal payments to a state or states under Section 403 ~~(as in effect during such fiscal year) for fiscal year 1994 attributable to expenditures~~ (other than child care expenditures) **and the amount of state expenditures (other than child care) as required in Section 409 (B)** ~~by the State or States under parts A and F (as so in effect) for fiscal year 1994~~ for Indian families residing in the service area or areas identified by the Indian tribe pursuant to Subsection (b) (1) (C) of this Section."

Explanation: Nationally, Indian tribes have unemployment and poverty rates far in excess of the national average. Under P.L. 104-193, a tribe which opts to administer a TANF program is not guaranteed of receiving any state supplemental funds. Most tribes are not in a financial situation to provide supplemental TANF funds, especially in light of the fact that they have a service population which is disproportionately in need of TANF services.

If a tribe does not operate TANF, the state must provide TANF services to Indian people in tribal areas. The amendment would require the federal government to provide to tribes with approved TANF plans the amount of state funding (except for child care funds) which would be spent in the tribal areas. Child care funds are not included, because tribes under P.L. 104-193 are now receiving child care funds directly.

Option 2 - Separate federal authorization for funding to make up for the lack of state TANF funds for tribal TANF programs.

Section 412. Add:

**"(I). FUNDS FOR TRIBAL TANF PROGRAMS.**

**In addition to the funds provided under (a) (1) of this Section, there shall be appropriated \$160 million annually for payments to tribes with approved TANF programs. The Secretary shall report to Congress of distribution of such funds, and the anticipated need for such funds as tribes assume administration of the TANF program. Funding not utilized in any fiscal year shall revert to the Treasury."**

Explanation: This provides authority for an appropriation equal to 1% of the \$16 billion currently provided to states for TANF to make up to the expected loss of state funds for tribes which administer the TANF program. Also, see explanation above.



**AMENDMENT #2 - Support proposed DHHS Amendment regarding tribal access to loans. (see below)**

**4. AVAILABILITY OF TANF LOANS TO INDIAN TRIBES**

*Problem:* Sec. 412 (f) (1) of the Social Security Act, which specifies that Indian tribes are subject to the penalty under Sec. 409 (a) (6) for failure to repay a loan under Sec. 406, indicates Congress' intent that the tribes be eligible for these loans. However, Sec. 406 speaks only in terms of loan-eligible states. The following amendment to Sec. 406 would provide explicitly for Indian tribes' eligibility for loans:

**Proposed Amendment:**

( ) AVAILABILITY OF FEDERAL LOANS TO INDIAN TRIBES. -- Section 406 (a) is amended by adding after paragraph (2) the following:

"(3) ELIGIBILITY OF INDIAN TRIBES. -- For purposes of this Section--

(A) the term 'loan eligibility state' includes an Indian tribe receiving a family assistance grant under Section 412 (a); and

(B) the reference in Subsection (C) to Section 403 (a) shall be considered, in the case of an Indian tribe, to be a reference to Section 412 (a)."

*Additional Explanation to Loan Program Amendment:* This provision would make tribes which operate a TANF program eligible for the federal welfare program loans. A specific use of the loan program for states is to meet their needs if Indian people move from

*tribal service areas to state service areas. There is significant mobility in the Indian population, and tribes would just as likely need loan funds to meet emergency needs for Indian people moving into their service areas.*

The section of the law concerning the tribal TANF programs states in Section 412 (d) that nothing in that section shall preclude an Indian tribe from seeking emergency assistance from any federal loan program or emergency fund. Apparently DHHS does not think this provision is clear with regard to tribal eligibility for the Section 406 loan program.

**AMENDMENT #3 - Make tribes eligible for the Contingency Fund, for bonuses based on a reduction in the rate of out-of-wedlock births, and for funding for establishment of data systems and other programs necessary for child support enforcement and TANF programs.**

Title I, at the end of Section 412, add:

**"(I) TRIBAL DEVELOPMENT FUNDS-**

**(1) ESTABLISHMENT.** There is hereby established in the Treasury of the United States a fund which shall be known as the "Tribal Development Fund" (in this section referred to as the "Fund").

**(2) DEPOSITS INTO THE FUND.** Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1997, 1998, 1999, 2000, and 2001 such sums as are necessary for payment into the Fund in a total amount not to exceed \$150,000,000.

**(3) GRANTS.** The Secretary shall make grants to tribes, taking into account tribal financial resources, unemployment, poverty data, the reduction in out-of-wedlock births, and tribal plans for child support enforcement.

*Explanation: The Act provides for a \$2 billion contingency fund for state welfare programs but not for tribal programs. It also provides bonuses for states, but not tribes, who reduce the rate of out-of-wedlock births. It also provides \$400 million to states, but not to tribes, for data systems needed for child support enforcement programs. This amendment would provide the same array of opportunities to tribal governments as is provided to state governments.*

**AMENDMENT #4 - Support the Secretary's amendments on disregard of time limits in certain tribal areas. (see below)**

**8. TIME LIMIT ON BENEFITS: DISREGARD OF CERTAIN ASSISTANCE TO RESERVATION RESIDENTS.**

*Problem: In recognition of high jobless rates and lack of employment opportunities in Indian country, Sec. 408 (a) (7) (D) of the Social Security Act provides for disregard, in determining the 60-month time limit on TANF assistance to a family, of assistance to residents of Indian reservations where specified conditions are met. The current statute presents various difficulties:*

*(1) It requires reliance on data that may not be available. Neither the Interior Department's Bureau of Indian Affairs (BIA) nor any other federal agency collects monthly data on the population or labor force status of persons in reservation areas or in Alaska Native villages.*

*(2) It does not apply to TANF programs operated by tribes, but only to state programs.*

*(3) Its narrow reference to "Indian reservation" excludes important areas within the standard definition of Indian country (e.g., former reservation areas in Oklahoma).*

*(4) Its 1,000-person population threshold would have the clearly unintended effect of making the disregard inapplicable to residents of most Alaska Native villages, as well as a large majority of Indian reservation areas, notably many small reservations in remote areas where unemployment is particularly severe.*

**Proposed Amendment:** (This is the DHHS - program amendment)

( ) TIME LIMIT ON BENEFITS: DISREGARD OF CERTAIN ASSISTANCE TO RESERVATION RESIDENTS.--Section 408 (a) (7) (D) is amended to read as follows:

"(D) DISREGARD OF MONTHS OF ASSISTANCE RECEIVED BY ADULTS WHILE LIVING ON TRIBAL LAND IN INDIAN COUNTRY, OR IN ALASKA NATIVE VILLAGES, WITH 50 PERCENT UNEMPLOYMENT.--

"(i) DISREGARD REQUIREMENT.-- In determining the number of months for which an adult has received assistance under the state or tribal program under this part, the state or tribe shall disregard any month during which the adult lived on an Indian reservation, in Indian country occupied by a tribe, or in an Alaska native village, if the most reliable federal data available with respect to such month (or a period including such month) indicate that at least 50 percent of the Indian adults living on such Indian reservation, in Indian country occupied by such tribe, or in such village, were not employed.

"(ii) DEFINITION.-- For purposes of this subparagraph, 'Indian country' has the meaning given such term in Section 1151 of Title 18 of the United States Code."

**AMENDMENT #5 - Tribal Determination of BIA/GA Program Payment Levels -  
*Providing tribes the right to determine the appropriate level of payment under the  
Bureau of Indian Affairs General Assistance program.***

*Explanation: Under the Act, Bureau of Indian Affairs General Assistance (GA) payments are tied to the level of payments made by the state in its Temporary Assistance for Needy Families (TANF) Block Grant. But, TANF, unlike its predecessor AFDC, is not an assistance program at all. A state could, for instance, emphasize using TANF for job training and transportation, and provide little funding in the form of cash assistance.*

It is likely that state TANF programs will result in decreased benefits, in part because states are required to provide only 75% of the supplemental funds they previously contributed and also because states are authorized to transfer up to 30% of their TANF funds to other programs. The situation will vary from state to state, so there is no definitive answer to the question of how TANF will affect the BIA General Assistance program. It is likely that the new welfare reform law will, at least in some states, place increased pressure on the BIA General Assistance program.

The BIA/GA and the TANF (former AFDC) programs serve different constituencies:

-- TANF is for families with dependent children.

-- BIA General Assistance is for persons who DO NOT qualify for AFDC -- so the BIA/GA program is more likely to serve older people without dependent children.

The fact that the budgetary line-item for the GA program is (as of FY 1996) in the BIA Tribal Priority Allocation budget category appears inconsistent with the Act's requirement that GA payments be tied to the level of payments in the state's TANF program. Also, there is a question as to whether the welfare reform statute's requirement that GA payments be tied to the state payment levels will apply to the BIA-administered GA programs only, or whether it will apply to both BIA and tribally-administered GA programs. The Act states that BIA General Assistance payments shall be made--

"(1) after April 29, 1985, and before October 1, 1995, on the basis of Aid to Families with Dependent Children (AFDC) standards of need; and

"(2) on and after October 1, 1995, on the basis of standards of need established under the state program funded under part A of Title IV of the Social Security Act, except that where a state ratably reduced its AFDC or state program payments, the Bureau shall reduce General Assistance payments in such state by the same percentage as the state has reduced the AFDC or state program payment."

**Proposed Amendment: Strike the above provision, Title I, Section 110 (k), in P. L.104-193.**

***AMENDMENT #6 - Child Support Enforcement Amendment - Cooperative Agreements with States. Support proposed DHHS amendment (below):***

**Sec. 375: CSE for Indian Tribes:**

**1. COOPERATIVE AGREEMENTS WITH STATES.**

*Problems: Sec. 454 (33) of the Social Security Act, as added by Sec. 375 (a) of PRWORA, requires several minor amendments to permit implementation.*

This provision as drafted sets threshold conditions for tribal participation in a cooperative agreement that represents burdensome and unnecessary barriers. This provision requires a tribal court system to have the authority to establish paternity, establish, modify and enforce support orders, and have child support guidelines established by the tribe or tribal organization. Some tribes may have the authority to accomplish some, but not all, of these functions, and may be willing to use state procedures and guidelines. Amendments made by paragraphs (1) and (2) below would permit tribal participation in cooperative agreements without requiring them to provide all services listed and to adopt tribal guidelines.

This provision also requires amendments (made by paragraph (3) and (4) below) to conform terminology to that is used in title IV-D generally.

**Proposed Amendment:**

( ) COOPERATIVE AGREEMENTS BY INDIAN TRIBES AND STATES FOR CSE.--  
Section 454 (33), as added by Section 375 (a) (3) of PRWORA, is amended--

(1) by striking "and enforce support orders, and" and inserting "or enforce support orders, or";

(2) by striking "guidelines established by such tribe or organization" and inserting "guidelines established or adopted by such tribe or organization";

(3) by striking "funding collected" and inserting "collections"; and

(4) by striking "such funding" and inserting "such collections".

**AMENDMENT #7 - Child Support Enforcement Amendment #2 - Direct Funding to Tribes.**

Title III, Section 375 (b) is amended to read:

**"(b) The Secretary shall make direct payments to an Indian tribe or tribal organization which has an approved child support enforcement plan under this Section. The Secretary shall, in partnership with tribes and tribal organizations and others with expertise in the child support enforcement field in determining guidelines for provision of direct funding to tribes.**

*Explanation: Under the Act, a tribe would have to undertake every single activity required of a state child support enforcement plan in order to receive direct funding to administer their own plan. It is clear from the statements of the Congressional sponsors of the tribal child support enforcement provision that they intended for DHHS to provide flexibility in approving tribal programs. The amendment would remove the word "title" which implies that tribal programs -- in order to receive direct DHHS funding -- must comply with all state requirements and substitutes the word "Section".*

The amendment would also require the Secretary to work with tribes and others in determining guidelines for direct funding to tribes under the child support enforcement program. Under the Act, the Secretary is directed to consider -- in making a determination of whether a tribe may administer its own child support enforcement program -- whether a state is providing services to eligible Indian recipients will have the unintended effect of discouraging tribes from working toward development of their own programs.



**AMENDMENT #8 - Section 402. ELIGIBLE STATES; STATE PLAN - Section 402(a)(4) of the Social Security Act is amended --**

( ) by adding the words "**and tribal**", after the word "local".

*Explanation: This amendment will provide tribes with equal assurance, currently granted to local governments and private organizations, that they:*

(A) have been consulted regarding the plan and design of welfare services in the state so that services are provided in a manner appropriate to local populations; and

(B) have had at least 45 days to submit comments on the plan and the design of such services.

**AMENDMENT #9 - Support Proposed DHHS Amendment Regarding State Option of Tribal Exclusion. (see below)**

**5. STATE OPTION TO EXCLUDE INDIVIDUALS SUBJECT TO TRIBAL WORK PROGRAMS FROM STATE PARTICIPATION RATES.**

*Problem:* Sec. 407(b)(4) of the Social Security Act gives states the option whether to include, in their work participation rate calculations, individuals receiving assistance under a Tribal TANF plan under Sec. 412(a)(1). States do not have the same flexibility to exclude from their participation rate calculations individuals who are in the state TANF program but are served by a tribal work program under Sec. 412(a)(2).

Under Sec. 412(a)(2), tribes that had JOBS programs in 1994 and 1995 remain eligible for grants for tribal work programs, regardless of whether they operate a TANF

program. These tribal work programs are subject to neither the old JOBS rules, nor the new TANF work rules. Because individuals served by tribal work programs may not be participating in work activities at the same rate as those in state programs, and because states will face special obstacles in engaging tribal members in state work programs, it would be reasonable to give states the option to exclude them from the state participation rate calculation.

This amendment would not affect work requirements applicable to individuals.

**Proposed amendment:**

( ) STATE OPTION TO EXCLUDE INDIVIDUALS SUBJECT TO TRIBAL WORK PROGRAMS FROM STATE PARTICIPATION RATES.-- Section 407(b)(4) of the Social Security Act is amended --

( ) in the caption, by inserting "OR WORK PROGRAM" after "FAMILY ASSISTANCE PLAN"; and

(2) by adding "or work program" before "approved under Section 412".

**AMENDMENT #10 - Reporting Requirements for Tribal TANF Programs.**

Section 412. DIRECT FUNDING AND ADMINISTRATION BY INDIAN TRIBES -  
Section 412(g) of the Social Security Act is amended to read:

"(g) DATA COLLECTION AND REPORTING.-- Section 411 shall apply to an Indian tribe with an approved tribal family assistance plan except insofar as the Secretary finds such requirements inappropriate to the tribe's circumstances."

Explanation: State governments have operated large cash assistance programs for decades. The federal government has provided financial assistance at a 90% federal share level to assist states to develop sophisticated computerized reporting systems for their programs.

There has been no similar support for the development of tribal Management Information Systems (MIS).

The requirements of Section 411 pose challenges to state MIS systems, even in view of the federal support they have long received. These requirements are virtually impossible for any tribe to meet without the diversion of substantial amounts of the tribe's limited TANF allocation to the creation of a new and very complex MIS capability.

The proposed amendment would enable the Secretary to modify the Section 411 requirements on a case-by-case basis to adapt them to tribal capabilities.

The proposed amendment has no budgetary impact.

#### **AMENDMENT #11 - Tribal Inclusion in the Secretary's Research, Evaluations, and National Studies of TANF Programs.**

Section 413. RESEARCH, EVALUATIONS, AND NATIONAL STUDIES - Include tribes in more activities.

Section 414. STUDY BY THE CENSUS BUREAU - Include tribes in the Census Bureau's data collection activities.

**Proposed Amendment:**

- **SEC. 413(a) Research.-** is amended by inserting the words "**and Tribal**" after the word State.
- **SEC. 413(b)(1) In General.-** is amended by inserting the words "**and Tribes**" after the word States.
- **SEC. 413(c) Dissemination of Information.-** is amended by inserting after the word State a comma ( , ) followed by the word "**Tribes**".
- **SEC. 413(f) State-Initiated Evaluations.-** - is amended by inserting the words "**or Tribe**" after the word State.
- **SEC. 413(f)(2)** - is amended by inserting the words "**and Tribes;**" after the word States. **SEC. 413(h)(3)(C)** - is amended by inserting by "striking the period" after the word communities., and inserting a comma ( , ) followed by the clause "**including tribal communities.**"
- **SEC. 414(a) In General.-** is amended by inserting the words "**and Tribal**" after the word State.

Explanation: This amendment will mandate that the Secretary conduct research on tribal TANF programs as well as state TANF programs, including information on potential benefits, effects, and costs of operating different TANF programs. These studies will also include information regarding the development of time limits relating to eligibility for assistance as well as effects that these programs may have on welfare dependency, illegitimacy, teen pregnancy, employment rates, child well-being, and any other area the Secretary deems appropriate.

#### **AMENDMENT #12 - Tribal Retrocession.**

Section 412. DIRECT FUNDING AND ADMINISTRATION BY INDIAN TRIBES -

Section 412 of the Social Security Act is amended by adding:

"(I) TRIBAL RETROCESSION. A tribe administering a tribal assistance plan under this section may, by notifying the Secretary and the state not less than 90 days prior to the beginning of the new fiscal year, choose not to implement that plan for such identified fiscal year."

Explanation: This amendment will allow a tribe to retrocede a tribal family assistance grant to the Secretary in the event that preconditions identified in the tribal assistance plan do not exist. Upon notice of retrocession to the Secretary, the Secretary shall withhold amounts otherwise due the tribe under this section and pay such amounts to the appropriate state upon terms and conditions contained in this part.

**AMENDMENT #13 - Amend Title I, Section 402 (A) (5) as follows:**

CERTIFICATION THAT THE STATE WILL PROVIDE INDIANS WITH EQUITABLE ACCESS TO ASSISTANCE-A certification by the chief executive office of the state that, during the fiscal year, the state will provide each member of an Indian tribe who is domiciled in the state and is not eligible for assistance under a tribal family assistance plan approved under Section 412 with equitable ~~access to~~ assistance under the state program ~~funded under this part attributable to funds provided by the Federal government.~~

Explanation: As currently written, the state is required to provide equitable access to people who are members of Indian tribes (as defined in the Indian Self-Determination Act) whose tribe does not administer a TANF program to services attributable to federal

funds. Indian people are citizens of states, and should be eligible for TANF services which are funded through the required state match or other state funds. As a practical matter, states would have a difficult time determining which TANF services are funded through federal verses state funds, as the funds will be co-mingled.

The term "access" with regard to services would be dropped as it is vague and unenforceable. Rather, the state is required to provide equitable services.

**AMENDMENT #14 - Amend Title I, Section 410, by adding:**

" (d) TRIBAL APPEALS.--The Secretary shall establish an appeals process for tribes and tribal organizations of adverse actions under this part which is comparable to that provided for states."

Explanation: This amendment will provide tribal governments an appeals process similar to that provided to state governments under this section.

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